



United States Department of State

The Legal Adviser

Washington, D.C. 20520

May 10, 2010

Honorable Thomas E. Perez  
Assistant Attorney General  
Civil Rights Division  
United States Department of Justice  
Washington, D.C. 20530

Re: *Saldaño v. Thaler* (E.D. Texas No. 4:08cv193)

Dear Assistant Attorney General Perez:

I write to request that the Department of Justice file this letter and attachment with the United States District Court for the Eastern District of Texas in the federal habeas corpus proceeding of *Saldaño v. Thaler* (E.D. Texas No. 4:08cv193), for the Court's consideration.

Petitioner Victor Saldano is an Argentine national who is under a sentence of death in Texas for capital murder. Concurrently with his federal habeas petition, Petitioner Victor Saldaño is pursuing a complaint against the United States before the Inter-American Commission on Human Rights ("Commission"),<sup>1</sup> alleging human rights violations under the American Declaration of the Rights and Duties of Man (Adopted at Bogota, Colombia, 1948, OAS Res. XXX) in connection with his death sentences. At a hearing before the Commission on November 3, 2009, the United States defended against Petitioner's allegations by representing to the Commission that United States domestic legal proceedings are currently available, timely, effective, and capable of remedying any alleged violation of Petitioner's rights. The United States stressed that "the availability of strong constitutional protections in the United States, including the pending domestic federal habeas corpus proceedings," serve to "provide a venue to address Petitioner's allegations and to redress any violations." United States Submission to the Commission in IACHR Case #12.254 – Victor Saldano, dated November 2, 2009 ("United States Submission"), attached, page 1. The United States further stated that:

[t]he right to life, right to equality under the law, right to a fair trial, right to humane treatment while in custody, and right to due process, including the right not to receive cruel, infamous or unusual punishment, as set forth in the American Declaration, are fully protected in the United States under the United

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<sup>1</sup> The Commission is an autonomous organ of the OAS and the leading human rights body in the Western hemisphere. The Commission has authority to receive and evaluate individual complaints, make general recommendations, request information, prepare reports, and engage in similar investigatory and disseminating activities regarding the human rights compliance of all OAS states, including the United States.

States Constitution and other provision of U.S. law, *and by affording to persons in custody access to the writ of habeas corpus*. The writ of habeas corpus, made available to a person in custody pursuant to the judgment of a state court under 28 U.S.C. 2254, applies to cases in which a state prisoner, like Petitioner, is alleged to be held in custody in violation of the Constitution or federal law of the United States. ....

**Petitioner therefore has an immediate and available avenue for vindication and remedying of any human rights and civil rights violation that he alleges has occurred."**

United States Submission, at 1. (*Italicized emphasis in original; bolded emphasis added.*)

The United States further described in its Submission the constitutional protections available for defendants in criminal proceedings in the United States under the Fifth, Sixth, Eighth and Fourteenth Amendments, including "significant protection against the trial, conviction and punishment of individuals with significant mental infirmities or disabilities." *Id.* at 4. The United States accordingly argued that the Commission should defer a final decision on the Petition to "allow the independent and robust federal judicial branch of the United States to conduct a review of Petitioner's claims, determine whether a violation of his rights has occurred, and fashion an appropriate remedy." *Id.* at 8.

During the November 3<sup>rd</sup> hearing, the Commission requested that the United States file an amicus brief in Petitioner's federal habeas corpus proceeding supporting his request for an evidentiary hearing, an action that could result in a "friendly settlement" of the twelve-year old Commission case. The United States would like to respond to the Commission as favorably as possible. The Inter-American Commission was established under the OAS Charter "to promote the observance and protection of human rights and to serve as a consultative organ of the Organization on these matters." Article 106. The United States strongly supports the work of the Commission, and participates and cooperates actively in its proceedings. We are one of the Commission's most vocal supporters and defenders among all OAS Member States, and are also one of its largest financial contributors, as a result of strong bipartisan Congressional support. The United States recognizes the Commission as an important mechanism for the promotion and protection of human rights in the Americas, in other states as well as our own.

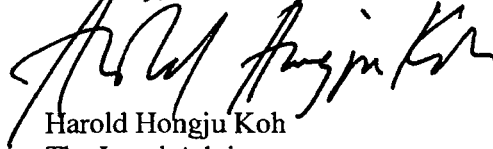
In addition to the pendency of this matter before the Inter-American Commission, the United States will be expected to report on its handling of this case before numerous United Nations bodies. This year alone, the United States will be submitting detailed reports on its human rights record to both the UN treaty body for the International Covenant on Civil and Political Rights (ICCPR) and to the Human Rights Council. In November, the United States will be sending a very high level delegation to Geneva to defend its human rights record in the UN Human Rights Council's Universal Periodic Review Process. Next year, we will be submitting a similar report to the Committee that oversees compliance with the Convention for the Elimination of All Forms of Racial Discrimination, and we likely will be appearing before the ICCPR treaty body to defend the U.S. Report. In the upcoming years the United States will also be submitting a periodic report and appearing to defend the report before the Committee that oversees implementation of the Convention Against Torture. The unusual facts of this case --

that Petitioner is a foreign national whose original death sentence was vacated as tainted by admitted unconstitutional racial bias during his initial penalty hearing and who now alleges that he has suffered severe mental deterioration during his lengthy confinement on death row -- set against the international community's broader concerns regarding discriminatory application of the death penalty in the United States, provides a strong additional basis for the Department of State to demonstrate to those UN bodies that the United States has taken every available step to address Petitioner's claims of violations of his constitutional (and human) rights.

Additionally, the Government of Argentina, a democratic and close ally, has a strong interest in this case, has closely followed the proceedings since the outset, and filed an amicus brief before the United States Supreme Court in 2007. Their Ambassador attended the November 3<sup>rd</sup> hearing before the Commission and called on officials at the Departments of State and Justice to urge that we comply with the Commission's request to file an amicus brief in support of an evidentiary hearing.

We therefore ask you to file with the court for its consideration this letter and a copy of the United States Submission to the Commission.

Sincerely,

A handwritten signature in black ink, appearing to read "Harold Hongju Koh", written over the printed name.

Harold Hongju Koh  
The Legal Adviser

Attachment:

as stated